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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

PEOPLE OF THE STATE OF ILLINOIS, et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent Illinois Central Gulf Railroad Company ("ICG") submits this Brief in Opposition to the Petition for a writ of certiorari filed by three Petitioners, People of the State of Illinois (William J. Scott, Attorney General), Illinois Commerce Commission, and United Transportation Union (John W. McGinness).

OPINIONS BELOW

The opinions and orders of the U. S. Court of Appeals for the Seventh Circuit, and of the Interstate Commerce Commission are reproduced in the Petition, Appendix A.

JURISDICTION

The jurisdiction of the Supreme Court is conferred by 28 U.S.C. 1254(1), following the entry of the opinion and orders of the United States Court of Appeals for the Seventh Circuit.

QUESTIONS PRESENTED

1. Whether a court reviewing an order of the Interstate Commerce Commission may accept an explanation of counsel in reviewing agency findings relating to consideration of this and other abandonment cases.

2. Whether a reviewing court may impose a condition to the exercise of the agency order which is itself implicit in the findings of the agency.

3. Whether the Commission properly considered the substantive issues attendant to an abandonment proceeding.

STATEMENT OF THE CASE

The proceeding involves orders of the Interstate Commerce Commission finding that public convenience and necessity permit the abandonment by Illinois Central Gulf Railroad Company of a 36-mile line segment in southern Illinois. The United States Court of Appeals for the Seventh Circuit has reviewed and affirmed those orders.

The line involved extends from railroad milepost 518 north of Elco to milepost 554 south of Murphysboro, Illinois. As shown in the reports and orders of the Interstate Commerce Commission, the line itself produces very little freight traffic between the points sought to be abandoned, the line passes through difficult terrain with hills and sharp curves, and the merged railroad company has various alternate service routes in the area. Prior to 1972, this line was part of a through main line of the former Gulf, Mobile & Ohio (GM&O) Railroad, lying generally parallel to a main line of the former Illinois Central Railroad (see sketch map, Petition, p. 16a). The 1972 merger of the two railroads permitted the merged company, Illinois Central Gulf, to utilize the better of the two north-south routes for the movement of its main-line freight trains. The subject line, part of the GM&O's St. Louis-Cairo line, was thereafter used only as local needs required.

The proposed abandonment does not involve Elco, a point from which a substantial volume of silica sand is shipped. As part of the proceeding, Illinois Central Gulf proposed to serve Elco from the south, i.e., over the line between Cairo and Elco. The shipper at Elco, Illinois

Minerals Company, stated that "the alternate service to their Elco mill by way of Cairo is satisfactory to them" (Petition, p. 26a), as the Commission found. Both reports of the Commission indicate an awareness of the pendency of the other two abandonment proceedings in southern Illinois and the relationships, if any, of the three abandonment proceedings.

Efforts of the nation's railroad companies, particularly in the Middle West and the East, to streamline their systems by eliminating duplicative or redundant routes are well known. Two major railroads in the Middle West, the Rock Island and Milwaukee Road, are in bankruptcy and are struggling to reorganize. The very survival of the railroads may well depend on the elimination of duplication of rail routes. This is a process being handled and adjudged by the expert agency entrusted by Congress to carry out this function, the Interstate Commerce Commission. The 36-mile segment lying between Elco and Murphysboro, Illinois, clearly fits the description of a redundant or duplicative route, which the Commission found not needed in the nation's interest.

ARGUMENT

Petitioners' arguments presented to this Court are at best on peripheral issues, as they do not reach the merits of the Commission's findings in favor of the line abandonment. Petitioners attack the form of the order of the Court of Appeals without really dealing with the substance of the case.

I.

THE COMMISSION ADEQUATELY CONSIDERED THE RELATIONSHIPS, IF ANY, OF THE THREE ABANDONMENT PROCEEDINGS IN SOUTHERN ILLINOIS, AND THE COURT OF APPEALS PROPERLY ACCEPTED EXPLANATION THEREOF.

Throughout the proceedings before the Commission and the Court of Appeals, the State of Illinois and the labor unions (Petitioners here) have contended that the Commission should have consolidated three pending abandonments:

1. The ICG abandonment here, between Elco and Murphysboro, Docket AB-43 (Sub. No. 16);
2. Another ICG abandonment in Williamson County, Docket AB-43 (Sub. No. 27); and
3. A Missouri Pacific abandonment between Joppa Junction and Fayville, Docket AB-11.

Comments on these three abandonments are found in the Petition, p. 3. The report of Division 3 of the Commission dealt extensively with the relationship of the three abandonments (Petition pp. 29a-31a) and specifically found as to continued rail service at Tamms:

> "With regard to the abandonment in No. AB-11, there is no sound reason for consolidating the more recently filed application herein with a considerably

older proceeding. Tamms will still have rail service if both abandonment applications are granted, since service will be provided over an alternate route." (Petition, pp. 30a-31a).

Thus, the Commission was clearly aware in both the Missouri Pacific case and in the ICG Elco-Murphysboro case that whatever business handled by either carrier at Tamms (a point some miles south of Elco) could be handled by ICG via the Cairo-Elco route. Comments of the Commission's counsel at the oral argument before the Court of Appeals simply focused on this situation, and the Court's opinion reflects this discussion. There are thus solid findings of the Commission supporting the Court's findings, and there is no conflict between the Commission's orders and the Court's findings on review. The reasoning of this Court in *Securities and Exchange Commission v. Chenery*, 332 U.S. 194 (1947) and in *Labor Board v. Metropolitan Ins. Co.*, 380 U.S. 438 (1965) is simply not applicable to the facts here.

II.

THE CONDITION IMPOSED BY THE COURT OF APPEALS IS IMPLICIT IN THE COMMISSION'S FINDINGS.

The abandonment application filed by ICG with the Commission proposed the abandonment of the line from a point north of Elco (milepost 518) to a point near Murphysboro (milepost 554). No abandonment was proposed at Elco or at Tamms, Illinois. Following the abandonment north of milepost 518, ICG will be able to serve Tamms and Elco from the south, via Cairo. The Commission's reports extensively discuss the Cairo-Elco service as an alternate route (Petition, pp. 23a, 24a, 26a, 30a, 31a, 34a, 37a).

In argument before the Court of Appeals, counsel for United Transportation Union argued that the abandonment could not take place unless the railroad unions first agreed to a new labor contract with the railroad company. The unions thus argued to the Court of Appeals that they held the power to frustrate the Commission's orders through their own unwillingness to cooperate with the railroad's effort to abandon this line. The Court, sensing a labor problem here, simply conditioned ICG's *exercise* of the abandonment order upon the establishment of alternate rail service between Elco and Cairo, which, of course, was part of the abandonment plan from the very start and was part of the Commission's consideration throughout. ICG has not been authorized to abandon the Cairo-Elco segment and must provide common carrier service in that area.

Thus, the Court of Appeals has in no way modified or changed the Commission's decisions and orders. The Court has allowed the abandonment to proceed, conditioned on the provision of alternate rail service via Elco and Cairo which is required by law anyway. This condition in no way changes or alters the decision reached by the Commission.

The cases cited by Petitioners relating to judicial modification of agency orders thus simply do not apply here.

III.

THE INTERSTATE COMMERCE COMMISSION HAS ENTERED ORDERS CONSISTENT WITH THE SUBSTANTIVE LAW PERTAINING TO RAIL LINE ABANDONMENTS.

The Transportation Act of 1920 amended the Interstate Commerce Act, 49 U.S.C. 1 ff., to provide that

no railroad may abandon its line or any portion thereof unless the Interstate Commerce Commission shall first issue a certificate permitting the abandonment. The Supreme Court thoroughly considered the issues of railroad abandonments in *Colorado v. United States*, 271 U.S. 153 (1926). The Act contemplates that the Commission will make a considered balance of the respective conflicting interests in deciding what fairness to the concerned parties demands. See also *Interstate Commerce Commission v. Parker*, 326 U.S. 60 (1945); *State of Nebraska v. United States*, 255 F. Supp. 718 (D. Neb. 1966).

The reports of the Commission reflect a searching inquiry into the losses of the railroad in operating the Elco-Murphysboro line and the interests of the people served by the line. The Court of Appeals likewise reviewed the Commission's orders based on the past decisions of the Supreme Court (Petition, pp. 8a, 9a ff.). These, of course, are the real substantive issues in a railroad abandonment case. Nowhere do the Petitioners here urge that either the Commission or the Court of Appeals erred in any respect as to these substantive issues.

Thus, even if Petitioners were correct in the points raised in the Petition for writ of certiorari, there is no challenge at all to the heart of the Commission's orders, i.e., consideration of the public issues as defined by the Supreme Court in *Colorado* and *Parker*, *supra*. The issues raised by Petitioners are thus peripheral and could not change the ultimate course and result of this proceeding.

CONCLUSION

This Court should deny the Petition for writ of certiorari, since there is no substance in the matters raised. Further, the issues in the Petition do not affect the ultimate issues and outcome of this case. There is no conflict between the orders of the Commission and/or orders of the Court of Appeals, on the one hand, and decisions of the Supreme Court.

Respectfully submitted,

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